

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Bengard Ranch, Inc.,

NO. C 08-03520 JW

Plaintiff,

**ORDER TO SHOW CAUSE RE:
DISMISSAL**

v.

Lett US One Corporation, et al.,

Defendants.

Plaintiff filed this action on July 23, 2008. (See Docket Item No. 1.) Under Fed. R. Civ. P. 4(m), Plaintiff had until November 20, 2008 to timely serve Defendants. Plaintiff did not file a motion with the Court to request an extension under Rule 4 until December 12, 2008, more than twenty-days pass the service deadline. (See Docket Item No. 7.) However, the Court granted Plaintiff a 60-day extension to serve Defendants. (See Docket Item No. 8.) The Court set a Case Management Conference for April 6, 2009.

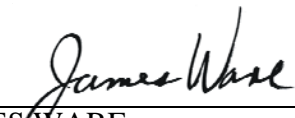
On March 23, 2009, Plaintiff filed two certificates of service showing that Defendants were served on March 16, 2009. (See Docket Item Nos. 9, 10.) Plaintiff also filed a Motion to Continue the parties' scheduled Case Management Conference and the deadline for filing a Joint Case Management Statement. (See Docket Item No. 11.)

1 Regardless of whether the 60-day extension is measured from the original November 20,
2 2008 deadline¹ or from the December 12, 2008 Order,² the Court finds that Plaintiff has failed to
3 timely serve Defendants pursuant to Rule 4.

4 Accordingly, the Court orders as follows:

- 5 (1) The Case Management Conference scheduled in this case for April 6, 2009 is
6 VACATED.
- 7 (2) Plaintiff shall appear in Courtroom No. 8, 4th Floor, United States District Court, 280
8 South First Street, San Jose, California on **April 27, 2009 at 9 a.m.** to show cause, if
9 any, by actual appearance in Court, and by certification filed with the Court at least
10 ten (10) days prior to appearance date, why this case should not be dismissed for (1)
11 failure to timely serve Defendants, and (2) failure to prosecute. The certificate shall
12 set forth in factual summary the reason Plaintiff has failed to timely serve Defendants
13 in this action. If Plaintiff fails to file the certification, the April 27, 2009 hearing will
14 be vacated automatically and the case will be dismissed for lack of prosecution
15 pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Failure to comply
16 with any part of this Order will be deemed sufficient grounds to dismiss this action.
- 17 (3) Plaintiff shall serve this Order on Defendants on or before **April 13, 2009** and file the
18 appropriate certificate of service.

19
20 Dated: April 2, 2009



JAMES WARE
United States District Judge

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23 _____
24 ¹ If the 60-day extension is measured from November 20, 2008, Plaintiff would have had to
25 serve Defendants by **January 19, 2009**. Defendants were served on March 16, 2009, well over two-
26 months pass this deadline.

27 ² If the 60-day extension is measured from December 12, 2008, Plaintiff would have had to
28 serve Defendants by **February 10, 2009**. Defendants were served on March 16, 2009, well over a
 month pass this deadline.

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Bart Mark Botta bart@rjlaw.com
3 Marion I Quesenbery marion@rjlaw.com

4 **Dated: April 2, 2009**

Richard W. Wieking, Clerk

5
6 **By: /s/ JW Chambers**

Elizabeth Garcia
Courtroom Deputy